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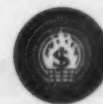
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THE SOLICITORS' JOURNAL



VOLUME 105

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CURRENT TOPICS

More Pious Perjury?

WE doubt whether Mr. MARPLES' new Road Traffic Bill will succeed in its purpose. One of its principal clauses would change the law in that a person would be taken to be unfit to drive a motor vehicle by reason of drink or drugs "if his ability to drive properly is for the time being impaired." For the majority of people this would mean that one drink would be an offence. If it is the Minister's intention that in practice the presence of a small quantity of alcohol shall make a driver guilty, on the Swedish model, it would have been better to say so and incur the wrath of the minority who can tolerate more than most with faculties unimpaired. In most cases doctors will be constrained to admit that a driver with a very small amount of alcohol must have his ability to drive "impaired." As the obligatory period of disqualification will be a minimum of twelve months, however slight the impairment, both magistrates and juries will be put under very serious strain. Ability to drive can be impaired by other things besides drink and drugs. The tired or ill driver is just as much a menace and he will escape on that score at least. Already there is a substantial element of bad luck in being prosecuted and convicted for careless driving. Motorists are resigned to paying £10 for a mistake which is detected. Where the consequence is disqualification for a year, a conviction will be regarded as an injustice and the law will be brought into contempt. The remedy is either to give the courts a discretion about disqualification or to lower the obligatory minimum period. Juries forced a change in the severity of the criminal law in the early part of the nineteenth century and we should learn the lessons of history. Much of the Bill seems to be based on the assumption that magistrates cannot be trusted to do their duty. The Government rightly hold back from excluding the right to trial by jury, although it is well known that juries are frequently more charitably disposed towards the errant motorist than are magistrates. We cannot see that to increase the maximum fine for careless driving to £100 will achieve any useful purpose: we are not aware of any case in which the present maximum of £40 has been found too low. We think that it is a retrograde move to reimpose compulsory disqualification for insurance offences: it seems to us that it would be far more logical to require very heavy fines to be paid to the Motor Insurers' Bureau. The proposal that refusal to provide a sample of blood, urine or breath shall be evidence of guilt is novel and will shock the traditionalists but we consider that it is justifiable. The Bill is hostile in intention, but we doubt whether it will make any significant impact on the tragic problem of road casualties.

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Not Informed

A LITTLE over a year ago (on 3rd March, 1960), the PARLIAMENTARY SECRETARY TO THE BOARD OF TRADE announced in the House of Commons arrangements designed to protect purchasers of second-hand cars against the existence of unknown and undischarged hire-purchase agreements affecting title to the car. The arrangements announced were that intending purchasers could inquire through their nearest Citizens' Advice Bureau whether the car was registered by Hire Purchase Information, Ltd., as being the subject of a hire-purchase agreement. Thus a major risk attending the purchase of second-hand cars was optimistically thought to disappear. That this was not so was demonstrated to the Court of Appeal in *United Dominions Trust (Commercial), Ltd. v. Cartwright*, reported in *The Times* of 22nd March, 1961. The cause of that case was simply that a finance company (not a party to the case) failed to notify Hire Purchase Information, Ltd., of a hire-purchase agreement on a car and (per LORD EVERSHED, M.R.) "thereby misled and gravely damaged a number of innocent people." Nonetheless, that finance company had a good title to the car, the only question before the court being which of the two innocent parties was to bear the loss. In the result, a dealer who bought the car at an auction had to pay damages for breach of his covenant for title on resale. The Master of the Rolls stated that "legislation is needed for the good name of British industry and the protection of the public"; he urged that registration of car hire-purchase transactions should be made compulsory. It would seem that without such legislation the yearling arrangements will remain a broken reed.

Arrangements for Children

UNDER the Matrimonial Proceedings (Children) Act, 1958, arrangements with respect to children are required to be made to the satisfaction of the court before the making of a decree in proceedings between husband and wife. More particularly, s. 2 (1) of the Act stipulates that in any proceedings for divorce, nullity of marriage or judicial separation where the High Court has, by virtue of s. 26 (1) of the Matrimonial Causes Act, 1950, jurisdiction in relation to any child, the court "shall not make absolute any decree for divorce or nullity of marriage" unless and until it is satisfied as respects every such child who has not attained the age of sixteen years either (a) that satisfactory arrangements, or the best which can be devised in the circumstances, have been made for the care and upbringing of the child, or (b) that it is impracticable for the party or parties appearing before the court to make any such arrangements. What is the position if the court grants a decree absolute without satisfying itself on either of these points? This question arose in *B v. B*, which we report on p. 301, where it appeared that the Commissioner who heard the undefended suit and granted the wife a decree nisi had made no declaration with regard to the arrangements for the care and upbringing of the two children of the family, the question of their custody having been adjourned into chambers. Before any such declaration was made, the decree nisi was made absolute, and SCARMAN, J., held that this decree absolute was a nullity as the provisions of s. 2 (1) of the 1958 Act were compulsory and not merely directive. However, his lordship granted the wife leave to apply forthwith for the decree nisi to be made absolute as she gave an undertaking to bring the question of the arrangements for the children before the court within twenty-eight days.

Power to proceed without observing the requirements of s. 2 (1) of the 1958 Act on the giving of such an undertaking is conferred by s. 2 (2) of that Act in those circumstances where it is "desirable that the decree nisi should be made absolute . . . without delay."

Offices and Shops

THE Offices Act, 1960, empowered the Secretary of State to "make regulations specifying the standards as to structure, arrangement and operation to be applied in offices for the protection of the health, safety and welfare of persons employed therein" (s. 1 (1)) but, since the written answer given by the LORD CHANCELLOR on 28th July, 1960, it has seemed doubtful that any such regulations will in fact be made. This suspicion has now been confirmed by the MINISTER OF LABOUR, who, in an oral answer on 20th March, 1961, said that it is not intended to make regulations under the powers conferred by the Act of 1960 and that the Government intend to introduce their own Bill dealing with health, safety and welfare in shops and offices before the Act of 1960 comes into force on 1st January, 1962. Mr. Hare hopes to make this legislation "effective and practicable," and it is good to know that many representative organisations have been consulted. For our part, we hope that the Government will see their way to include detailed provisions in the Bill itself, and not merely confer power to make regulations.

Determining the Owner

SECTION 1 (1) of the Police (Property) Act, 1897, provides that where any property has come into the possession of the police, *inter alia*, in connection with any criminal charge, a court of summary jurisdiction may, on application either by an officer of police or by a claimant of the property, make an order for the delivery of the property to the person appearing to the magistrate or court to be the owner thereof, or, if the owner cannot be ascertained, make such order with respect to the property as to the magistrate or court may seem meet. The Wellington, Salop magistrates recently made such an order. It was alleged that a wheelbarrow was stolen from a building site and used to remove a safe from a butcher's shop. The barrow was found at the home of the claimant and, after hearing evidence from three other members of his family to the effect that it had belonged to them "for generations," the magistrates ordered that it be handed to him. The consequences of failing to seek the protection of this section were demonstrated in *Winter v. Bancks* (1901), 84 L.T. 504. Winter bought a gig which, having been stolen from him, was found by the police in the possession of one Broderick, who was indicted for larceny of the gig, but acquitted. Both Broderick and Winter claimed the carriage and, acting on the instructions of his superior, Bancks, a police officer, delivered it to Broderick as the person from whom they (the police) had taken it. Winter was found to be the true owner of the gig and Bancks was held liable in trover to him.

The Solicitors' Journal

THE Easter holidays necessitate an alteration in the distribution arrangements for next week's issue. It will be posted one day later, to reach subscribers on Saturday, 8th April. Subsequent issues will be posted as usual in time for delivery on the Friday of every week.

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HIRE PURCHASE: SOME RECENT DECISIONS

ON 2nd March, in *Campbell Discount Co., Ltd. v. Bridge*, p. 232, *ante*, the Court of Appeal gave a clear indication that there might well be a need for further legislative intervention in the field of hire purchase, while in *Campbell Discount Co., Ltd. v. Gall*, p. 232, *ante*, the protection afforded by existing legislation was demonstrated. The hirer succeeded in *Spruce v. Unity Finance, Ltd., and Others*, p. 254, *ante*, and again, largely, in *Yeoman Credit, Ltd. v. Apps*, *The Times* (1961), 17th March.

The case of the agreement that wasn't

To take *Gall's* case first, the defendant agreed with a dealer to "buy" a car for £265 and paid the dealer a deposit of £65. The transaction would have fallen within the Hire Purchase Acts had it been concluded properly, but *Gall* signed a hire-purchase agreement with the plaintiffs in which the blank spaces relative to price and instalments had not been filled in. The dealer's manager falsely inserted a price of £325 and also increased substantially the periodical repayment which *Gall* had been told to expect to pay. The false figures in themselves would have taken the agreement outside the Hire Purchase Acts.

For the defendant it was argued that the agreement fell within the Hire Purchase Acts and that it was void because the statutory requirements had not been fulfilled. He counter-claimed for the return of the deposit. The court concluded that the matter hinged upon the dealer's manager—was he agent for the plaintiffs, the defendant, both or neither? A preliminary point was whether or not the court could go behind the agreement at all. *Pearce, L.J.*, drew analogies from the Rent Acts and the Bills of Sale Acts and found that the court could admit parol evidence to show that a written transaction which appeared to satisfy or exclude the Acts was not a true transaction and that the real transaction fell within the scope of the Acts. There was existing authority for this in *Menzies v. United Motor Finance Corporation, Ltd.* [1940] 1 K.B. 559. The point was of some importance because the agreement contained a clause declaring that the dealer was not the agent of the finance company. But on the true facts the agreement was within the Acts and so by s. 5 (e) of the 1938 Act the clause was void, and so could not be taken into account. The court then concluded on the facts that the dealer's manager was the agent of neither *Gall* nor the plaintiffs.

The Court of Appeal found that there was never any agreement between the parties. There was no *consensus ad idem*. Both were contemplating different sets of figures. Consequently the plaintiffs could not succeed in their claim for payment of instalments under the agreement nor could the defendant counter-claim for the return of the deposit, though he might well have been able to sue the dealer for money had and received.

Importance of bringing agreement within the Acts

It is often very useful to be able to show that the dealer is the agent of the finance house, e.g., when he has made false representations as to the quality of the goods, and in this respect the case is instructive. Had the plaintiffs been able to show that the dealer's manager was the defendant's agent to complete the agreement, it would presumably have been open to the defendant still to go behind the agreement and seek the protection of the Acts, for he could have shown that he did not sign a memorandum as required by s. 2 (2)

of the 1938 Act. The importance of trying to bring the agreement within the scope of the Acts is that it affords a second line of defence. In *Eastern Distributors v. Goldring* [1957] 2 Q.B. 600, it was decided that if the hirer signs an agreement which has not been completed with the details as to price, s. 2 (2) has not been complied with and the agreement is unenforceable—at any rate if the agreement is put forward as being the memorandum required by the Acts. Therefore, even if it is found that there is an agreement, then if the figures to be considered, whether in fact fictitious or not, fall within the Acts, the agreement is still unenforceable, though the section does not confer on the hirer any right to recover money actually paid. The memorandum must be signed by the hirer personally and the dealer cannot, therefore, be the hirer's agent to complete it. If the dealers are not worth suing for money had and received it may therefore be valuable to establish that they had authority to receive the deposit as agents for the finance house whether or not the finance house entered into the agreement.

The price of honesty

Bridge's case concerned a "minimum payment clause" and produced an expected though unwelcome answer to an outstanding problem. Until the last decade it was generally thought that the principles of the law of contract relating to fixed amounts made payable by the defaulting party on breach of a contract did not apply to a clause in hire-purchase agreements making a fixed sum payable by the hirer on determination of the agreement. This view was given considerable backing by the decision of the Court of Appeal in *Associated Distributors, Ltd. v. Hall* [1938] 2 K.B. 83, that a sum payable by the hirer on his exercising his option to determine the agreement before the full amount to be paid under it was paid was not capable of being a penalty. But in *Cooden Engineering Co., Ltd. v. Stanford* [1953] 1 Q.B. 86, the Court of Appeal by a majority (*Somervell* and *Hodson, L.J.J.*), reached the opposite conclusion where the agreement was determined by the owners in consequence of a breach of its terms by the hirer, and held that the clause in question was in fact penal. There was a dissenting judgment by *Jenkins, L.J.* The difference of view can be summarised very briefly by saying that the majority did not think any distinction could be drawn between a sum payable on the termination of an agreement in consequence of a breach of its terms and a sum payable on breach of its terms. In *Lamdon Trust v. Hurrell* [1955] 1 W.L.R. 391, *Denning, L.J.*, followed this decision and enlarged upon it as well as giving an indication of the matters which would be considered in deciding whether or not the sum payable was in fact a penalty.

These two decisions threw doubt on the earlier decision in *Associated Distributors, Ltd. v. Hall*, and that decision was challenged in *Bridge's* case. *Bridge* entered into a hire-purchase agreement for a car, paid one instalment promptly and then determined the agreement of his own free will because he realised he could not afford the instalments. The agreement was in a fairly common form and included an option for the hirer to determine the agreement at any time and also a clause providing that on any determination of the agreement the hirer should be liable to pay, *inter alia*, such sum as should be necessary to make the instalments paid and payable equal to two-thirds of the hire-purchase price. The Court of Appeal unanimously held that there could be no

question of penalty—this was the price to the hirer of determining the agreement and *Associated Distributors, Ltd. v. Hall* must be followed. There was no room for interference on equitable grounds. Leave to appeal to the House of Lords was given, and both Pearce and Harman, L.J.J., indicated that the remedy really rested with Parliament. But there are still several points left open: will the court interfere in a really harsh and unconscionable case on equitable principles? And what happens where the agreement is determined otherwise than entirely voluntarily by the hirer or by the owner in consequence of a breach? For example: on the death of the hirer; by mutual agreement; by the hirer in consequence of or after breaches of it by him; by the hirer under pressure from the owner; by the owner at the request of the hirer; or imperfectly. How deeply will the court go to fit the case into the *Cooden* decision or the *Bridge* decision? Once the curtain has been lifted will the court consider the facts which gave rise to the determination?

The point is of great importance because sometimes a hirer determines the agreement as he is in arrear and does not want those arrears to increase, although the owner has not determined the agreement. If the goods are not worth re-taking it may be better for the owner to let the arrears accrue. It is to be hoped that the House of Lords will be asked to review the whole subject.

Spruce v. Unity Finance, Ltd.

To return to the Court of Appeal, however, in *Spruce v. Unity Finance, Ltd., and Others*, the agreement contained a clause requiring the hirer to insure the car which was the subject of it. The finance company argued that there was implied into this a term that the hirer must give them all necessary information about the insurance. In this they failed, and Pearce, L.J., pointed out that such a term was often inserted in hire-purchase agreements and the omission indicated that it did not form part of the contract. This is very true—the clause requiring production of the policy and premium receipts is one which there has been a tendency to sacrifice for the sake of brevity, but the answer may well be a general clause requiring that the hirer shall when called upon to do so reasonably satisfy the finance company that he is complying with the terms of the agreement, whether express or implied. Here arises another point. The finance company were entitled to terminate the agreement if the hirer failed "to observe or perform any agreement or condition herein contained." Pearce, L.J., held that these words could not apply to an implied condition. The maxim of *contra proferentem* applied.

This may well lead to some re-thinking on the drafting of agreements. There are many clauses these days which are abstruse if not meaningless, and one admires those finance houses which are bold enough to shed some of the less essential clauses to produce a document which a shopper can read. Against that, one must also applaud any decision which will prevent the finance company from taking the drastic step of terminating the agreement for a reason which does not go to the essence of their relationship with the hirer. Perhaps a secondary and less far-reaching remedy should be devised, and it may be that the contractual rules as to penalties, which would almost certainly make any small monetary fine for small breaches open to attack, are not the blessing they appear to be at first sight.

Yeoman Credit, Ltd. v. Apps

We now move on to *Yeoman Credit, Ltd. v. Apps*, where the alleged breach was on the part of the finance company

and it did go right to the essence of the relationship. In this case the car was in an unsafe and unroadworthy condition and was not in a reasonable state of repair. In actual fact the dealer who negotiated the hire-purchase agreement had agreed with the hirer to carry out such repairs in consideration of the hirer entering into the agreement, but he did not do them. The hirer paid some instalments and then refused to pay any more as the repairs had not been done.

Pearce, L.J., said that it was clear from *Karsales (Harrow), Ltd. v. Wallis* [1956] 1 W.L.R. 936, that there was an implied term in the contract that goods supplied should be fit to be used for the purpose for which they were intended, even if the hirer had relied on the dealer. Harman, L.J., said the finance company warranted that the goods were reasonably fit for the purpose for which they were hired. Here there was clearly a breach of this condition, and it was a fundamental breach of the contract and so unaffected by the exclusion clause. Further, a fundamental breach of the contract can be made up of a series of breaches which do not of themselves constitute such a fundamental breach.

But here there was not a total failure of consideration. The hirer could not claim back all he had paid, as where there had been a breach of condition as to title, but the finance company would be allowed to retain something for the period between delivery and when the hirer chose to exercise his right of rescission, which had existed since delivery.

It is dangerous to try to read too much into the judgment of Pearce, L.J., until an edited report is available, but he would appear not only to have followed *Karsales (Harrow), Ltd. v. Wallis*, but also to have approved the decision of Finemore, J., in *Warman v. Southern Counties Car Finance Corporation, Ltd.* [1949] 2 K.B. 576, that where there is a breach of the condition as to title the hirer is entitled to recover all the money he has paid under the contract and the finance company cannot retain anything for the use of the goods by the hirer.

Further, the judgment recognises the theory that there can be a contract between the dealer and the hirer, the hirer's consideration for which is that he is entering into a hire-purchase agreement with the finance company. In many cases this contract will include representations by the dealer as to the condition of the goods, so that the hirer will have a separate right of action against the dealer governed by the general rules of contract as to conditions, warranties, fraud, innocent misrepresentation, etc. The dealer's representations have then nothing to do with the hire-purchase agreement—and exclusion clauses which protect the finance company may not, therefore, shelter the dealer.

The new law is the decision that there was no total failure of consideration. The county court judge had already assessed damages should that be the case, so we do not know on what basis the amount retainable by the finance company is to be assessed. Will it be the rental under the agreement? In truth, this is a fictitious figure, as we all know, particularly as it may be governed by the current fiscal policy of the Government; but in theory what could be more appropriate? If so, only the deposit would be recoverable. It may not be such a good idea to express this to be the consideration for the option to purchase after all, however.

One final comment is that, just as it may pay to be dishonest, this decision affirms the practical rule which was illustrated also in *Lowe v. Lombank, Ltd.* [1960] 1 W.L.R. 196—if you are buying a defective car on hire purchase, the more defective it is the better. Which goes to show how crazy hire-purchase law is.

W. D. P.

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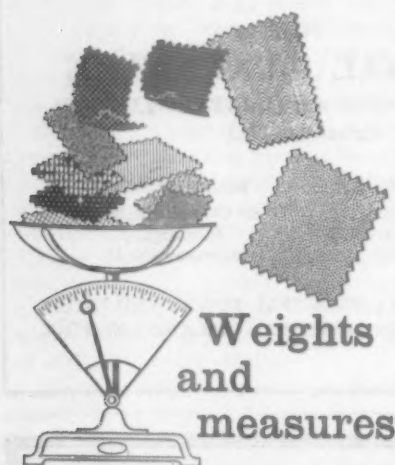
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ADMINISTRATION WITH A FOREIGN ELEMENT—IV

SUCCESSION

IN previous articles we have advised Mr. Lewis about the formal validity of the deceased's will, the rules governing grants of representation, and the impact of estate duty on the estate. Our next problem is that of succession. It will be remembered that the deceased, so far as we know at this stage, only disposed of part of his estate by will; hence we must find out who is entitled to succeed to the undisposed-of estate. We may tend to think of "succession" as connected exclusively with total or partial intestacy, but when dealing with foreign laws we have particularly to remember that some such laws arbitrarily impose certain rules of succession irrespective of any will the deceased may leave (this point also falls under the head of "essential validity" referred to below). For instance, in Spain there is the arbitrary rule that the heirs of a deceased are entitled to two-thirds of the estate. Consequently, questions of succession may cut across a will and cannot, therefore, be ignored simply because a will exists (see, for instance, *Bartlett v. Bartlett* [1925] A.C. 377).

Succession to immovable property

Succession to immovable property is governed by the law of the *situs* of the property (*Balfour v. Scott* (1793), 6 Bro. P. C. 550 (H.L.)). It is probable that the right of an adopted child to succeed to immovable property is determined by the law governing succession, i.e., the law of the *situs*, but the point does not appear to have been specifically decided. This is certainly the rule in the case of movable property (*Re Wilson; Grace v. Lucas* [1954] Ch. 733). Legitimation of a child depends upon the law of his domicile of origin (*Re Goodman's Trusts* (1881), 17 Ch. D. 266) and this was recognised for all purposes *except*, before 1st January, 1926, succession to real property (which it will be remembered passed to the heir at law, etc.) (*ibid.*). Now that heirship has been abolished, except in one case of certain persons of unsound mind, and property undisposed of is converted by English law into personalty by virtue of being held on trust for sale (s. 33 of the Administration of Estates Act, 1925) it is probable that if the claimant was validly legitimated by the law of his domicile of origin he will be entitled to take property under the rules of intestacy in this country. In so far as immovable property has been disposed of by will, the validity of the will is, as has already been noticed in the first article, determined by the law of the *situs*.

Succession to movable property

Succession to movable property on an intestacy is governed by the law of the deceased's domicile at the date of his death (*Balfour v. Scott*, *supra*). When the English court refers to the law of the deceased's domicile the English court will follow any pronouncement of the courts of the domicile without questioning the grounds of the foreign court's decision (*Collier v. Rivaz* (1841), 2 Curt. 855). If the foreign law has not decided the point then the English court will, upon the evidence of foreign law available, try to decide what the foreign court would have decided if it had been seised of the case (see *Re Duke of Wellington; Glentanar v. Wellington* [1948] Ch. 118, in spite of the somewhat chilly remark in Theobald on Wills, 11th ed., p. 18, that "what exactly was decided in the *Wellington* case is something of a mystery"). We do not enlarge here on the merits of the various theories about *renvoi*.

If for some reason property is ownerless, i.e., is property to which no one is entitled (*bona vacantia* in English intestacy law) the Crown in this country can claim such property situated within its jurisdiction (*In the Estate of Musurus* [1936] 2 All E.R. 1666). If, however, it can be shown that the law of the domicile appoints a foreign State as an "heir" instead of merely designating that State as entitled to property which is ownerless, then that State can claim property in this country instead of its going to the English Crown as *bona vacantia* (*In the Goods of Maldonado; State of Spain v. Treasury Solicitor* [1954] P. 223).

In applying these principles to Mr. Lewis's particular problems we may find, for instance, after ascertaining from legal experts the rules of succession in the various foreign countries in which the deceased's estate is situated, that heirs (if any) of the deceased in another country may claim part of the property that the deceased has purported to dispose of by the will Mr. Lewis is concerned with, in which event a case for election (mentioned below) may arise.

Essential validity of the will

Our next inquiry concerns the essential validity of the will itself. We learn, for example, with some concern that one of the attesting witnesses was Lewis's wife, and Lewis has been left a legacy under the will. Also, such questions as the validity of the gifts to charities, or whether the settlement created by the will is void for perpetuity, or whether or not children of the testator are entitled to share in part of the estate irrespective of any testamentary disposition, all raise questions of essential validity. These have to be decided by the law of the testator's domicile, ascertained on the principles above described (*Re Priest; Belfield v. Duncan* [1944] Ch. 58; *Campbell v. Beaufoy* (1859), Johns. 320; *Re Annesley; Davidson v. Annesley* [1926] Ch. 692; *Bartlett v. Bartlett*, *supra*; see, however, Cheshire, *Private International Law*, 4th ed., pp. 533 et seq., on the subject of charitable gifts; and *Re Groos; Groos v. Groos* [1915] 1 Ch. 572, for an instance where a change of domicile after the execution of the will avoided certain restrictions which the law of the former domicile placed on the disposal of the estate).

Power of appointment

We notice also that the will purports to exercise a power of appointment under an English settlement. (Powers of appointment are unknown in many foreign countries.) A power in these circumstances is validly exercised if the will is executed according to ss. 9 and 10 of the Wills Act, 1837, or according to the law of the testator's domicile at the date of his death (*D'Huart v. Harkness* (1864), 34 Beav. 324) or, for that matter, according to the relevant law under the Wills Act, 1861, where that Act applies (*Re Simpson; Coutts v. Church Missionary Society* [1916] 1 Ch. 502). In the second instance, which fits Mr. Lewis's problem, any other formalities prescribed by the power must also be complied with by the will; if they have not been complied with the appointment will be invalid (*Barretto v. Young* [1900] 2 Ch. 339) unless an English court under its equitable jurisdiction will aid the defective execution, a thing it is prepared to do in favour of the appointor's children (*Re Walker; MacColl v. Bruce* [1908] 1 Ch. 560).

We recall, while on this topic (although the point does not, as far as we can see, assist Mr. Lewis), that the helpful provision of s. 27 of the Wills Act, 1837 (whereby a general bequest is deemed, in the absence of a contrary intention in the will, to exercise a general power of appointment), is readily applied to foreign wills (*Re Price; Tomlin v. Church Missionary Society* [1900] 1 Ch. 442; *Re Waile's Settlement Trusts; Westminster Bank, Ltd. v. Brouard* [1958] Ch. 100).

Construction

Questions of construction of a will affected by a foreign element are governed by the law which the testator intended, such intention being gathered from the terms and language of the will (*Yates v. Thompson* (1835), 3 Cl. & F. 544). There is a presumption that the testator intended the law of his domicile at the time of execution to govern the will (*Re Cunningham; Healing v. Webb* [1924] 1 Ch. 67), but this can be displaced by a different intention on the part of the testator, discerned from the will (*Re Price, supra*). Section 3 of the Wills Act, 1861, provides that the construction of a will is not to be altered by reason of any subsequent change of domicile of the testator. It should be noticed that the rules of evidence in deciding questions of construction are not the rules of the law of the deceased's domicile but the law of the forum where the case is heard (*Yates v. Thompson, supra*).

It has already been pointed out that a foreign law may insist upon a testator's heir receiving a certain portion of the estate in any event. If under such a rule immovable property is bound to pass to such an heir and movable property is also given to the heir by the will, an English court will put the heir to election whether to take the immovable property

and compensate the legatee of the movable property or whether to give up the immovable property to the devisee under the will, if the law of the testator's domicile recognises an obligation to elect (*Brodie v. Barry* (1813), 2 V. & B. 127; *Re Ogilvie* [1918] 1 Ch. 492).

Finally, when Mr. Lewis comes to distribute the estate, unless the testator has expressly indicated in what currency the various legacies are to be paid (in which case he must observe the testator's direction: *Raymond v. Brodbelt* (1800), 5 Ves. 199), the legacies should strictly be paid in the currency of the testator's domicile (*Saunders v. Drake* (1742), 2 Atk. 465), or possibly in that of the place where the will was executed (*Pierson v. Garnet* (1786), 2 Bro. C.C. 38), and will carry interest at the rate applicable where the assets for legacies are (*Malcolm v. Martin* (1790), 3 Bro. C.C. 50; cf. *Saunders v. Drake, supra*). If the legacy has to be paid out of English estate it must be valued according to the relevant rate of exchange (*Campbell v. Graham* (1831), 1 Russ. & M. 453) on the anniversary of the testator's death, i.e., at the end of the usual "executor's year" (*Re Eighmie; Colbourne v. Wilks* [1935] Ch. 524), and paid, maybe, only with Treasury consent under s. 5 of the Exchange Control Act, 1947, according to the foreign residence of the legatee. If the legatee is an infant both by English law and that of his own domicile, Mr. Lewis can get a good receipt from him (and may therefore safely pay him) when first he becomes *sui juris* under either law (*Re Hellmann's Will* (1866), L.R. 2 Eq. 363).

No doubt we shall come across many more problems in the course of winding up the estate, but at this stage Mr. Lewis has had quite enough . . .

(Concluded)

B. S. K.

CHARACTER—II

Fair trial essential

WHEN the cross-examination on behalf of the defence enters the border-line phase, a tactful warning ought to be given by prosecuting counsel or presiding judge—particularly when the prisoner is unrepresented (*R. v. Cook* (1959), 43 Cr. App. R. 138; *R. v. Morris, ibid.*, p. 206). There is no hard-and-fast rule about it, however (*Maxwell v. Director of Public Prosecutions* (1934), 24 Cr. App. R. 152), and no sooner does the accused put his character in issue than counsel for the prosecution becomes entitled to cross-examine him on it, though he is not obliged to exercise the right that has thus accrued to him. Indeed, he would be well advised to refrain from embarking upon such cross-examination, "unless the circumstances are such as to make it appear to the mind of the learned counsel to be a positive duty that he should enter upon that somewhat invidious task" (*R. v. Dunkley* (1926), 19 Cr. App. R. 78). His discretion in this matter is subject to the over-riding discretion of the judge; so that even when counsel feels it to be his duty to cross-examine as aforesaid, he should—particularly in doubtful cases and especially when the prisoner is not defended by counsel—apply to the judge for leave to proceed, in order that he (in his turn) may have an opportunity of exercising his judicial discretion one way or another (*R. v. McLean* (1926), 19 Cr. App. R. 104). The exercise of that discretion would not be interfered with unless the judge had erred in principle or there was no material on which he could properly have based his decision. If, however, he failed to exercise his discretion, the Court of Criminal Appeal would exercise its own discretion (*R. v. Cook, supra*).

While the defence ought to avoid being ham-handed and the prosecution must not be thin-skinned, it is the duty of the judge to see to it that the accused does not suffer unduly. The matter is one of common sense, a right sense of balance, a correct idea of what—in the circumstances—is fair and just to both parties. "The essential thing is a fair trial, and that the Legislature sought to ensure by s. 1 (f)" (*R. v. Jenkins* (1945), 31 Cr. App. R. 1). Of course, there are obvious cases on either side of the line, but there are also border-line cases; and it is in these that the judge's qualities are tested. Above all, it should be remembered that the subsection was intended to encourage the accused to give sworn evidence on his own behalf and to afford him protection in his so doing. Moreover, it is best by far that he should be tried objectively on the facts, and that the jury should not be prejudiced by knowledge of his past history. Accordingly, the judge may disallow the cross-examination on either or both of the following grounds: (1) that the proposed cross-examination "may be fraught with results which immeasurably outweigh the result of questions put on behalf of the prisoner and which render a fair trial almost impossible" (*R. v. Jenkins, supra*); (2) that the harm resulting from the cross-examination of the accused is likely to be out of all proportion to its evidential value (*R. v. Cook, supra*).

If by chance cross-examination of the accused as to his bad character had been wrongly permitted, then the Court of Criminal Appeal would not apply the proviso to s. 4 of the

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Criminal Appeal Act, 1907, in a case where it was clear that the jury might have been influenced by the evidence thus admitted. It is not necessary to infer that the jury must have been so influenced (*R. v. Rodley* [1913] 3 K.B. 468, at p. 475). Thus where evidence as to bad character was admitted in breach of the third exception in the subsection (the two defendants joined in the same indictment were not charged with the same offence) and the cross-examined co-defendant was convicted and appealed, the Court of Criminal Appeal quashed the conviction (*R. v. Roberts* (1936), 25 Cr. App. R. 158).

Putting prisoner's character in issue

To put his client's character in or not to put it in, is one of the questions which exercise defence counsel's mind most in a criminal trial—especially since "there is no such thing known to our procedure as putting half a prisoner's character in issue and leaving out the other half. A prisoner who has a bad character for dishonesty is not entitled to say that he has never acted indecently towards women and claim he has not put the rest of his character in issue" (per Humphreys, J., in *R. v. Winfield* (1939), 27 Cr. App. R. 139). Similarly, as we have seen, once the accused's character has gone in, the question which preoccupies the judge is whether or not he should withdraw from the accused the protection of the subsection. He has a discretion in the matter, and the Court of Criminal Appeal is slow to interfere with that (as with any other) judicial discretion; more so because the judge at the trial is in a better position to judge whether the cross-examination as to character should be allowed (*R. v. Watson* (1913), 8 Cr. App. R. 249).

There is a difference between merely attacking the witnesses for the prosecution, on the one hand; and adducing evidence of the accused's good character, or asking questions of prosecution witnesses with a view to establishing it, on the other. In either of the latter cases, as we have seen, the prosecution would be entitled under the subsection as well as at common law to adduce evidence in rebuttal and/or to cross-examine the accused as to his character, should he venture to give evidence on oath. Yet if questions are asked of witnesses for the prosecution which suggest or show that they are of bad character, then their character is put in issue and not the accused's, since that would discredit them without affecting his own reputation. Accordingly, if he elects to give evidence on his own behalf, he could—subject to the judge's discretion—be cross-examined as to his bad character and previous convictions under the statute; but if he does not go into the witness-box, then the prosecution are not entitled to lead evidence which will expose his character (*R. v. Butterwasser* (1947), 32 Cr. App. R. 81). He has no such right at common law, while the statute expressly refers to "a person charged and called as a witness" and to his being "asked"; so that it can only apply when the accused gives evidence, and only by way of cross-examination and (if required by the prosecution and allowed by the judge) rebuttal (*R. v. McKenna* (1956), 40 Cr. App. R. 65). In such circumstances, however, the failure of the defendant to give evidence on oath and submit himself to cross-examination would probably be made the subject of comment by the judge (*R. v. Rhodes* [1899] 1 Q.B. 77, at p. 83).

Prosecution's retaliatory right

Two dicta have been pronounced as to the fairness of the prosecution's right to retaliate in the matter of character, each giving—it is submitted—a different reason, but the

difference between them seems to have escaped notice. In *R. v. Jenkins*, *supra*, Singleton, J., said: "If the credit of the prosecutor or his witnesses has been attacked, it is only fair that the jury should have before them material on which they can form their judgment whether the accused person is any more worthy to be believed than those he has attacked." Ten years later Lord Goddard, C.J., declared: "The jury is entitled to know the credit of the man on whose word the witness's character is being impugned" (*R. v. Clark* (1955), 39 Cr. App. R. 120). To begin with, on the undoubted principle that in the event of their believing neither side or of their trusting both sides equally, the jury must acquit—since the prosecution, on whom the burden of proof rests, would have failed to discharge it—it would seem to follow from the first dictum that in every case where mutual discrediting takes place between prosecution and defence an acquittal is logically inevitable: even though the attempt to discredit the prosecution witnesses may be unjustified, e.g., when a police officer is falsely accused of obtaining a statement from the defendant by threats. The absurdity of this inference—and, therefore, of the dictum from which it logically flows—will appear even more manifestly when it is realised that acquittal would not be a necessary or a logical outcome if the defendant attacked the witnesses for the prosecution without actually enduring retaliation owing to the exercise of the judge's discretion in his favour. The second dictum, however, is apt, entails no absurd consequences, and works justice in either case, whether the character of prosecution witnesses is rightly or wrongly impugned.

Exposure of character to attack credibility

At any rate, it must be emphasised that the purpose of exposing the defendant's bad character under the second and third exceptions of the subsection is solely to attack his credibility, generally or in respect either of his claim to good character or of the attack made on the character of the witnesses for the prosecution. Under no circumstances is his bad character exposed in order to suggest—much less to show—that by reason of it the defendant is likely to have committed the offence or offences for which he is tried. Juries and magistrates should be informed and reminded of this. Indeed, that is one reason why—as we have seen—once the accused's character goes in, then the whole of it is exposed, i.e., his previous convictions of offences dissimilar as well as similar to that or those in hand. Again, just because it is no disproof of good character that a person has been suspected or accused of crime, questions about such suspicion or accusation become relevant, and can be asked by way of cross-examination as to credit, only if the prisoner has sworn expressly to the contrary (*Maxwell v. Director of Public Prosecutions* (1935), 24 Cr. App. R. 152; *R. v. Waldman*, *ibid.*, p. 204; *Stirland v. Director of Public Prosecutions* (1944), 88 Sol. J. 255). Finally, that is the rationale of the enactment upon which the decision in *Butterwasser's* case, *supra*, is based; for since the accused has not given evidence on oath there is no ground for discrediting him by exposing his bad character. Indeed, if this were allowed, the purpose would not be to discredit him but to suggest or show that he is likely to have committed the offence or offences wherewith he is charged—which, as we have seen, is not permissible under the second and third exceptions. The first exception of the subsection, on the other hand, only deals with "proof that he has committed or been convicted of such other offence" or offences proof of

which "is admissible in evidence to show that he is guilty of the offence wherewith he is then charged"—and such proof is adduced as part of the case for the prosecution, whether the accused does or does not give evidence on oath. That is why when, at his trial, the accused was asked under

this exception of the subsection whether he had been charged with an offence, and was convicted, the Court of Criminal Appeal quashed the conviction (*R. v. Cokar* [1960] 2 W.L.R. 836.

(Concluded) JOSEPH YAHUDA.

PRISONERS OF HISTORY—III

MORE WORK FOR THE MAGISTRATES

WE welcome the Streatfeild Committee's recommendation that breaking offences other than those involving a dwelling-house should be triable summarily with the consent of the accused under the procedure laid down in s. 19 of the Magistrates' Courts Act, 1952. It is evident that a great amount of time is spent, both by examining magistrates in taking depositions and by quarter sessions in passing sentences within the scope of petty sessions, without any commensurate benefit, where the breaking element in the offence is comparatively unimportant and sometimes only technical. The principle ought not to be taken too far. Although, in the words of the report, "for the actual offender the sentence he receives is far more important than the court which passes it," it would be a mistake to underrate the importance of reserving to superior courts the powers of sentencing even if the facts are admitted in the court below. We agree with those witnesses who argued before the Committee that the atmosphere and greater formality of the superior courts, coupled with the period of waiting before trial and the possibility of a substantial sentence, has a salutary effect. For this reason we should consider the possibility of enabling petty sessions to take pleas of guilty even when dwelling-houses are involved, but of making it obligatory to commit for sentence. The procedure would be simple. The accused would be asked whether he consented to summary trial and told he would be committed for sentence in any event. If he consented and pleaded guilty, committal for sentence would automatically follow, although we believe that in all cases the accused ought to be supplied with a detailed statement of the facts

which the prosecution allege. If he pleaded not guilty having elected to be dealt with summarily, petty sessions would have no power to hear and determine the case but would take the depositions in the ordinary way. The Committee propose that other offences which are now triable only on indictment should, with the consent of the accused, be triable summarily. These include indecent assault on a man or woman aged 16 or over, and fraudulent conversion of property not exceeding £100 in value, some forgery offences, abandoning a child under the age of two years and endeavouring to conceal the birth of a child. The Committee rejected suggestions that larceny of horses, cattle and sheep, sending threatening letters and gross indecency between male persons should be triable summarily, but here again we think that it is worth considering whether petty sessions ought not to be able to take a plea of guilty and then commit for sentence.

The strength of our argument against taking unnecessary depositions would be diminished if we could rationalise the procedure. We have no doubt about the value of the preliminary examination in contested cases and in many others, but there is no point in using it where it serves no useful purpose. "Would it help if I pleaded guilty to the whole thing here and now?" once asked a weary defendant half-way through the second day of taking depositions. With commendable restraint three magistrates (only one of whom need have been there), the clerk and his assistant, two solicitors and several policemen refrained from chorusing "Yes," and the weary process continued to the bitter end.

P. ASTERLEY JONES.

LET YOUR HEN RUN!

THIS article was inspired by part of the recent decision of Danckwerts, J., in *Littlewoods Mail Order Stores, Ltd. v. Inland Revenue Commissioners* [1961] 2 W.L.R. 25; p. 38, *ante*. That case concerned a complicated and not entirely successful stamp duty avoidance scheme. Much simplified, but sufficient for present purposes, the relevant facts were as follows: *L* and *F* executed a deed, which they called a deed of exchange, whereby *F* assigned a leasehold property to *L* and *L* conveyed a freehold property to *F*. It was accepted that the values of the two properties were equal. The deed was sent for adjudication and assessed for stamp duty at £16,978.

The ground for *L*'s appeal was that the stamp duty to be charged upon an exchange is specified in Sched. I to the Stamp Act, 1891, as 10s. The principal argument on behalf of the Crown was that the deed was also a conveyance on sale (£1 per £50) so that the Commissioners were entitled to choose under which head to assess it. Danckwerts, J.,

distinguished his own decision in *Lord Portman v. Inland Revenue Commissioners* (1956), 35 A.T.C. 349, since it was there plain that the so-called deed of exchange in fact implemented a number of sales—two mutual sales do not make one exchange. In the present case there was no earlier contract of sale and the learned judge saw no reason for saying that the deed was other than what it purported to be on its face.

A subsidiary point, important to this article, was also disposed of in the words of Danckwerts, J., at the end of his judgment (at pp. 35–36) as follows:—

"It was said by the Commissioners that one cannot have an exchange except of interests which are of the same character. There is the authority of Blackstone's Commentaries, 18th ed., vol. 2, pp. 322–3, in favour of that proposition, but I doubt whether that is the law at the present time. In *J. & P. Coats, Ltd. v. Inland Revenue Commissioners* [1897] 1 Q.B. 778, Wills, J., suggested (at p. 784) that possibly that was the law, and that exchanges could only be made of freehold interests

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in land. That seems to me to be going beyond anything that Blackstone said; but, however it may be, I do not think that that is the law at the present time. In my opinion the law has progressed beyond that state, and there may, at the present time, be exchanges of many different interests. There may possibly be an exchange of one class of property for another class of property; and certainly there may be an exchange of an interest in land for a different interest in the same land, which may be greater or smaller. I do not think, therefore, that the subsidiary point, which, indeed, was not pressed upon me for decision, is one with which I need concern myself. In the result, the document in question is not subject to ad valorem stamp duty, but is to be stamped with a 10s. stamp as an exchange."

Simple scheme suggested

You are consulted by a prospective acquirer of realty to the tune of, say, £25,000, who as always wants to save the £500 stamp duty. You suggest that his first step is to take a cheap lease of your hen run. He thinks you are mad and asks what he is to do with a hen run. You explain that he will be able (assuming co-operation) to contract to exchange his leasehold property (i.e., your hen run) for the realty he wants. Naturally he will have to pay £25,000 for equality and perhaps a little more (less than £500) to secure co-operation. Then you tell him that the stamp duty on a deed of exchange is only 10s., convincing him that he has consulted a sane solicitor.

The decision in *Lord Portman v. Inland Revenue Commissioners* will not apply here, since, far from there being mutual contracts of sale implemented by a so-called deed of exchange, here the transaction will be taken in hand early enough for there to be a contract for exchange to be implemented. Further, since equality money will be paid, the transaction will hardly be a voluntary disposition within s. 74 of the Finance (1909-10) Act, 1910. The exchange should not be for stocks and shares since this would be treated as a sale: *J. & P. Coats' case*, *supra*.

There is provision (s. 73) in the Stamp Act, 1891, charging any consideration given for equality of exchange with the same ad valorem duty as a conveyance on sale. In fact, that is the principal charge under the head Exchange; it is only "in any other case" that the fixed duty of 10s. is chargeable. However, s. 73 only applies: "Where upon the exchange of any real or heritable property for any other real or heritable property . . ." Therefore, the exchange of realty for leasehold property (or leasehold property for leasehold property) is clearly caught, not by s. 73, but by "in any other case." Of course, the very fact that Parliament has specifically dealt with equality money paid on an exchange, albeit only of realty, should strengthen the argument against treating the transaction, in form and legal effect an exchange, as a conveyance on sale. Indeed the scheme does not approach the artificiality of the full facts in the *Littlewoods Mail Order* case where the realty and the leasehold property were one and the same building.

The conclusion appears inescapable that anyone who can find both a hen run (or a garage or anything) to lease and a co-operative "vendor" of realty—and at a reasonable price both hen runs and co-operation should be readily available—can do a swop and save all but a little over 15s. of the stamp duty. There will be the duty on the lease, a 6d. stamp on the contract, 10s. on the deed of exchange, and 5s. on the inevitable duplicate. There should in theory be no need to send the deed of exchange for adjudication; it should be presumed properly stamped as an exchange.

The above scheme appears so simple, particularly when compared with that in the *Littlewoods Mail Order* case, that there must surely be a flaw. The writer, who has failed to spot it, will be momentarily grateful to any reader enlightening him.

J. T. FARRAND.

Landlord and Tenant Notebook

A TIED WAREHOUSE

THE agreement before the court in *Akerib v. Booth and Others, Ltd.* [1961] 1 W.L.R. 367; p. 237, *ante* (C.A.), was, according to Devlin, L.J., in a form not unusual in Lancashire. According to Danckwerts, L.J., it was so inartistically drawn as to be calculated to bring tears to the eyes of any competent equity draftsman; but the learned lord justice refrained from making any reference to tripe, and, when it came to interpretation, may be said to have applied a principle tersely stated by himself when, as Danckwerts, J. (but sitting as an appellate judge), he said: "A lease is not intended to be either a mental exercise or an essay in literature; it is a practical document dealing with a practical situation" (this was said in *Levermore v. Jobey* [1956] 1 W.L.R. 697 (C.A.)).

The agreement in question created three relationships between the parties. We are all familiar with tied cottages and tied public-houses; in each of these cases there are two relationships. The defendants in *Akerib v. Booth and Others, Ltd.*, however, were packers of goods who owned a building consisting of at least four storeys, and they had let parts of that building to the plaintiff on terms including a clause by which he would employ them exclusively in the

making up and/or packing of all goods bought by or belonging to him or in which he might be interested or which might come under his control in connection with his business as carried on on the premises. There were thus three relationships: they were landlord and tenant, packer and customer, and occupiers of adjoining premises. Another clause obliged the landlords to do the making up and/or packing "subject to the terms and conditions set out in the schedule hereto"; and one of the conditions in the schedule read: "The landlord shall not in any circumstances be responsible for damage caused by fire water (including sprinkler leakage and damp) storm tempest insects vermin or fungi to any goods whether in the possession of the landlord or not."

There was also, in the body of the agreement, a sub-clause requiring the tenant to duly perform and observe the conditions set out in the schedule, and one of Danckwerts, L.J.'s criticisms was that the schedule, which, Devlin, J., had said, appeared to consist almost entirely of exceptions to the landlord's liabilities and other terms in his favour, contained nothing for the tenant to perform. But the question before the court was whether the words "any goods whether in the possession of the landlord or not" covered stationery

and office materials which had been damaged as a result of the defendants' servants' negligence (the overflow pipe of a cistern had become blocked, and the staff had failed in their duty to cut off the supply at night).

Relation to subject-matter

It was by applying the principle that, however wide the language, a clause—particularly if it is an exceptions clause—must always be construed in relation to the subject-matter with which the parties are dealing that the court decided this issue in the plaintiff's favour. "Any goods," it was held, did not mean any goods whatsoever. The clause had nothing to do with the landlord and tenant relationship; the landlords would not be responsible as such. An adjoining occupier might need such exemption (it is not necessary to refer to "Little Drops of Water," p. 143, *ante*); but the escape of water might damage the premises as well as the goods; consequently, the limitation to goods pointed to an intention to except liability for goods in the tenant's possession as a customer. The fact that the exception mentioned insects, vermin and fungi invited the same conclusion: it is an exception frequently found protecting carriers and warehousemen, but not protecting an adjoining occupier as such.

Point just taken

As stated in "Current Topics" in our issue of 3rd March ("Unusually Appealing," on p. 190), a remarkable feature of this case was that the appellant did not complain at all about the judgment at first instance, when argument had been limited to the question whether the other "any" in the clause, namely that to be found in the phrase "the landlord shall not in any circumstances be responsible for damage caused by fire water," etc., protected the defendants against the consequences of negligence on their part. The plaintiff accepted the decision that it did so protect the defendants, and his complaint might be said to be one of non-feasance rather than misfeasance or malfeasance. It appears that enough had been said about the second point to entitle him to raise it on appeal. It would, however, be interesting to know what had been said, as regards quality if not as regards quantity; for, while the report of Danckwerts, L.J., does not refer to the matter, Devlin, L.J., said that it was "agreed that the point was at any rate mentioned though it was immediately overshadowed by the other point," Davies, L.J., that it had been "hardly mentioned at all," had not been argued, but had, in fact, been "adumbrated." Which suggests that Devlin, L.J.'s "overshadowed" may have been a very apt metaphor.

R. B.

USUAL SIGNATURE

It is the only conference at which all are welcome: office boys, tea girls, clerks, partners, the lot. But it usually starts with just two. Somebody rises, his eyes fixed on a piece of paper in his hand, and gropes his way over to somebody else's desk.

"Are you any good at reading terrible handwriting? What do you think this name is?"

Long pause.

"Nairn? Ujber? Might be either."

"Can't be both. I thought this was an H."

"Oh, I thought it was one of the initials. J. H. Nairn or J. H. Ujber. Or F. H. Nairn. Or F. A. Nairn."

"Or Ujber. No, I thought it might be F.—or J., it doesn't matter—Hugber or Hugger. Huggins? What do you think, Milly?"

People begin to drift over. There are schools of thought.

"Nairn."

"Ujber."

"You've got this tall letter, this one. It can't be Nairn."

"I don't think that's a small J. That's the little mess he makes when he underlines it. He makes a little mess."

"But would a reasonable chap with a name like Ujber underline it with a mess?"

"That's what I'm trying to say. If it's a mess his name isn't Ujber."

"In any case, reasonable chaps aren't called Ujber. Or if they are they soon get warped."

"Who does?"

"Hullo there, Egdoler! Come in more noisily, eh?"

"McIan. McNab."

"Cigarette?"

"Thanks. Sorry! Most of it's gone in the saucer."

Somebody with a practical mind intervenes.

"Who is this chap, anyway?"

"Ujber."

"No, I mean, what does he want?"

"I don't know. It's all in this terrible writing."

"Well, if we don't know what he wants it doesn't matter what his name is, does it?"

"Oh, well, I suppose I can work it out roughly. Something about some property at Llanrwst, I think."

"That's probably his way of writing Manchester."

And so on. In the end, of course, one can write to the address given, if it is legible, and say, "I am afraid I cannot quite make out your signature," but nobody I know likes to do this without consulting twenty or thirty of his colleagues first. In some firms memoranda and even thought have been devoted to containing or centralising this abnormal activity, but to no, or not much, avail. Once we had little adhesive labels printed, saying in red capitals "IDENTIFY", which we stuck on letters that were illegibly signed or that we wanted to forget temporarily; the whole was then passed, if we remembered, to the filing department or some department that we had reason to dislike. Soon somebody in the department concerned would grope his way over to somebody else's desk with our letter and normal procedure would be carried out. Work would be left undone, telephones abandoned, teacups knocked on to the floor, typists' shoes hidden in filing cabinets, cigarette ends trodden into the partners' carpets, and friendships, desirable and undesirable, made and broken. The advocates of the system claimed that it had the advantage of confining the uproar to a single, known department, but they omitted to provide watertight doors.

The adhesive label system did have one fairly lasting effect, though, and that was on the mind of the chief clerk of the filing department, who began to write letters to the newspapers about illegible signatures. When a man has written

a number of letters to the papers on the same subject he sometimes feels a reforming spirit creeping over him. He issues memos to his staff about handwriting and signatures and begins to tell his friends in other firms that they do not write neatly or sign their names properly. Firms frequently sign themselves Beowulf and Chiribiribim, but it doesn't matter as long as they have a note heading. By now this man thought it did, though.

At this time he took to ringing up firms with whom he had been corresponding and asking for persons whose names existed only on paper, in their own or their secretaries' execrable signature. He had to work his way through about as much Mr. Whoing and emming for mayonnaise as you can imagine a man would who rang up Jones, Jones and Johnson, said he had never heard of them, and asked for a Mr. Aardvark, and I don't think he ever got past the switchboard by this method. It is no use being ironical with telephone operators,

who have little or no influence on signatures but can and do cut you off, and eventually this man returned to normal and gave up worrying about signatures, as everyone has to do in the end.

I would not have raised these embarrassing matters, though, if I had not some sort of solution to offer, however imperfect, on the subject of illegible signatures. The answer is surely a simple office rule, rigidly applied, that if two, or at the most three, people cannot read a signature, nobody can read it. This is absolutely untrue (the next person who walks into the office will sometimes render with ease a signature that has previously inspired nothing but doubt about which alphabet, if any, is in use), but it is an invaluable fiction if you want to restrict office parties and other damage to the Christmas period, retirements, promotions, births, marriages and the occasional comparatively tidy burglary.

BAGATELLE.

HERE AND THERE

JET-PROPELLED JUSTICE

THE Interdepartmental Committee on the Business of the Criminal Courts has, as we know, recommended that, in order to speed up business on the circuits, a flying squad of judges should descend upon various assize towns during the Long Vacation. This form of jet-propelled justice could, no doubt, be successfully grafted on to our age-old judicial system, which has survived the supersession first of the horse by the railway train for riding the circuits, and since of the train by the motor car. But British innovation tends to move "with unperturbed pace, deliberate speed, majestic instancy," that is to say, the speed and the instancy are saved from headlong impetuosity by the deliberation and the majesty, and it is no surprise to learn that in the matter of bringing divorce procedure to the most modern pitch of rapid efficiency, there has been introduced into the American way of life a striking application of the resources of air travel. This business-like enterprise, combining the functions of a travel agency with those of a legal adviser, is reported to go by the name of "D-Flights" and is designed for those who wish to combine a near-instantaneous change in their matrimonial status with a brief but stimulating change of scenery. It would seem that a properly organised trip to Juarez in Mexico fulfils both these desiderata for those impatient citizens of the United States who find the more conventional judicial procedure of a Reno divorce too tedious for their requirements. The service, planned with the precision of a military operation, leaves no cause for complaint and, all things considered, the price is not excessive. The petitioner client is flown to El Paso in Texas, where a swift motor car, complete with escort, is ready for a dash across the border, giving the adventure something of the *panache* of an old-world Gretna Green elopement. At Juarez a judge is in attendance to put the machinery of the law into instant motion. Its operations are so swift, sure and painless that within an hour the liberated spouse is in a position to make the return journey.

NO TECHNICAL HITCHES

MORE dilatory and technically-minded systems of law have obviously much to learn from the jurists who have devised this signal service for the relief of suffering humanity. In the first place, there seem to be none of those fiddling difficulties

about waiting for a place in the cause list, which beset more hidebound systems of procedure elsewhere: there, it would seem, the court waits for the customers, not the other way about. In the second place, there is apparently provided a day and night service, as in a casualty ward. It is a wonder that none of our more advanced law reformers have thought of that one as a subject for agitation. What! Must justice sleep? How can cases be dealt with speedily and efficiently by courts which usually sit for fewer than eight hours in the twenty-four? Of course they cannot. Then you must condition the lawyers to adapt themselves to the shift system, if justice is to be a commodity available to the millions in convenient sizes, neatly packaged, easy to handle, warranted non-injurious. The cost of the comprehensive service of "D-Flights" is likewise exemplary, amounting only to about £180 in addition, of course, to the air travel fares, which vary with the distance flown. Night service at the court naturally costs something extra, but we are inured now to the principle of overtime and "time and a half" in industry, and when the courts at last assimilate their methods to those of industrial mass production, they are surely entitled to apply the same standards of remuneration. No one can say that the cost is exorbitant. Why, even in England an undefended divorce may cost not far off £180. The only question that troubles me about the headlong efficiency of the Juarez divorce procedure is: What would happen if the other side suddenly decided to defend the suit? Would the proceedings develop into a race between two departments of "D-Flights"? Would the clients be frantically competing for the swiftest plane and motor car, the most daring pilot and chauffeur? A margin of one hour leaves little time for a defendant to burst into court, panting and perspiring, to oppose the decree. But perhaps it is now outdated sentimentality to suppose that anyone in tune with the trend of the times would want to stay married to a reluctant spouse. In that case perhaps even the Juarez procedure is too cumbersome and formalistic, and the future probably lies either with an instantaneous self-service supermarket divorce establishment or an electronic computer, fed with standard relevant data and delivering the appropriate decree complete with bill of costs while you wait at the counter.

RICHARD ROE.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and, in general, full reports will be found in the Weekly Law Reports. An asterisk against a case indicates that there is no present intention of reporting it in the Weekly Law Reports.

Court of Appeal

HIRE PURCHASE: INFANT: INDEMNITY

Yeoman Credit, Ltd. v. Latter

Holroyd Pearce, Harman and Davies, L.JJ.

24th March, 1961

Appeal from Southend County Court.

The plaintiffs, a finance company, let a car on hire to the first defendant, whom all the parties knew was an infant. The second defendant signed a form headed: "Hire Purchase Indemnity and Undertaking." The infant made the initial payment but never paid any instalments. The car was repossessed and sold and the plaintiffs claimed £182 8s. from the second defendant under the indemnity.

HOLROYD PEARCE, L.J., said that the hire-purchase agreement was void under the Infants Relief Act, 1874. In the county court the second defendant argued as a preliminary point that the indemnity was really a guarantee and, since it guaranteed a void contract, it was itself void. The two questions raised by the appeal were: Was the document in question a guarantee, although styled an indemnity? If it was, was it void? It was clear from the surrounding circumstances that the document headed "Hire Purchase Indemnity and Undertaking" was intended to be something more than a guarantee. That told in favour of its being in truth an indemnity. However, the court had to have regard to its essential nature. The document's effect was to protect the plaintiffs against any loss they might suffer, since it assured to them the full hire-purchase price plus any costs incurred by them. The second defendant's rights, if called on to pay, were different from the rights of subrogation under a guarantee. The plaintiffs' rights against the hirer and the second defendant would, under a normal guarantee, have been identical, but under the present document the rights were different. The document did not provide that the second defendant should make good the hirer's defaults. Only if the totality of the transaction produced either a loss or a profit less than that which the total hire-purchase price yielded could the second defendant be asked to pay. The document was in truth as it stated an indemnity against any loss resulting from or arising out of the agreement and not a surety against loss resulting from any breaches of the agreement. The fact that the parties were aware of the legal difficulty created by the hirer's infancy and the wording of the document made it improbable that the transaction was intended as a guarantee. The second defendant was underwriting the profitable success of the transaction; he was not insuring against contractual breaches of it by the hirer. The agreement was not a contract of guarantee but a contract of indemnity. Accordingly, the second question did not arise. The second defendant's preliminary point failed and the case had to go back to the county court to be heard on the facts.

HARMAN, J., delivered a concurring judgment.

DAVIES, L.J., said that throughout the case he had found himself in considerable doubt on the true meaning of the contract and despite the powerful reasons given by the court he still found himself in that position. As the case was not concerned with any question of general law, but with the construction of a particular document, the less he said the better.

APPEARANCES: Neil Lawson, Q.C., and John Lloyd-Eley (Paisner & Co.); E. H. Laughton-Scott (Drysdale, Lamb & Jackson).

[Reported by Miss C. J. ELLIS, Barrister-at-Law]

Chancery Division

COSTS: WARDSHIP PROCEEDINGS: COSTS OF OFFICIAL SOLICITOR AS GUARDIAN AD LITEM

In re C (an Infant)

Buckley, J. 23rd March, 1961

Adjourned summons.

On 20th April, 1960, on a summons by the father of a ward of court, an ex parte injunction was granted to restrain X from marrying or otherwise associating with the ward. On motions on 22nd April, 1960, to commit X for associating with the ward and to restrain the ward and X from associating, which were adjourned, Buckley, J., on 9th May, directed that the ward should be advised and represented by the Official Solicitor as her guardian ad litem. On 25th May, on a notice of motion served on the ward and the Official Solicitor, Buckley, J., gave directions as to the ward's residence; on 3rd June, pursuant to his order, the ward and X were made respondents to the summons of 20th April, and the mother of the ward was joined as an applicant. The motions of 22nd April were heard on 9th June, when the Official Solicitor entered an appearance on behalf of the ward, and were adjourned for further evidence, but the matter never returned to the court as X and the ward went abroad and were married outside the jurisdiction. The Official Solicitor took out a summons for an order that the costs incurred in the performance of his duties as guardian ad litem might be taxed and paid to him by the ward's parents.

BUCKLEY, J., said that under r. 3 (2) of the Supreme Court Costs Rules, 1959, the costs were in the discretion of the court. Where a parent unable to control his child applied to the court for assistance, and it was proper, as in the present case, for the infant to be made a party, the applicant parent was in the position of a plaintiff in an action suing an infant defendant. It had been necessary for the ward to be represented by a guardian ad litem and there was no one but the Official Solicitor suitable to act. The merits of the case did not enter into the matter. He would direct that the costs of the Official Solicitor as guardian ad litem, including those of the motion of 22nd April to restrain the ward from associating with X, and of 25th May, be taxed and paid by the ward's parents, but not the costs of the committal motion of 22nd April, which would be negligible.

APPEARANCES: W. J. C. Tonge (Official Solicitor); Michael Essayan (Donald Silk & Co.).

[Reported by Miss M. G. THOMAS, Barrister-at-Law]

INCOME TAX: SUMS RECEIVED UNDER POLICIES COVERING DELAY OF SHIP REPLACEMENTS: WHETHER CAPITAL

Crabb (Inspector of Taxes) v. Blue Star Line, Ltd.

Buckley, J. 24th March, 1961

Appeal from special commissioners.

Policies of the type known as P.P.I. (policy proof of interest) effected by a company with Lloyd's in respect of seven new ships ordered from time to time as replacements for their fleet provided, *inter alia*, for payment of a fixed daily sum should delivery of the ship be delayed by accident beyond the "due delivery date." Later, in respect of claims under the policies relating to two ships, the company received substantial sums. For the year 1955-56 assessment under Sched. D was made on the company in the sum of £2,000,000, subject to capital allowances and to losses brought forward

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(Continued on p. xiii)

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for set-off from previous years amounting to £178,741. The inspector calculated the losses on the basis that the amounts received and premiums paid under the policies in respect of the ships were receipts and payments relating to loss of profits and that, as they were of a revenue nature, they fell to be included in the company's losses. The company appealed to the special commissioners, contending that the receipts and payments were of a capital nature and should have been excluded from the computation of losses, which amounted on that basis to £239,512. The appeal was allowed. The Crown appealed against that decision.

BUCKLEY, J., said that in his view the sums secured by the policies were really associated with the price which the company felt justified in paying for the services which the shipbuilders were contracting to give, the insurances being against the possibility of the shipbuilders not providing such valuable services as by the contract they were promising to provide. The special commissioners came to the right conclusion and the appeal would be dismissed with costs.

APPEARANCES: *F. N. Bucher, Q.C.*, and *Alan S. Orr (Solicitor of Inland Revenue)*; *F. Heyworth Talbot, Q.C.*, and *G. B. Graham (Wright & Brown)*.

[Reported by K. R. A. HART, Esq., Barrister-at-Law]

Queen's Bench Division

TIME FOR APPLYING FOR INTERPLEADER RELIEF: NON-REGISTRATION OF BUSINESS: COSTS

Watson v. Park Royal (Caterers), Ltd.

Edmund Davies, J. 21st March, 1961

Appeal from Brighton District Registrar.

From 1956 to June, 1958, foodstuffs to the value of £918 were supplied to the defendants' hotel from a business of the name of "Brays." In June, 1958, the plaintiff sought payment of that debt from the defendants. The defendants had thought that one, Wood, was the proprietor of "Brays." In December, 1957, Wood had assigned to the plaintiff the "business of a greengrocer . . ." carried on at another address and the goodwill thereof. Three weeks later the plaintiff registered under the Registration of Business Names Act, 1916, a greengrocer's business of another name as being carried on by her at that other address. In July, 1958, the defendants learnt that one, Waite, was in some way associated with "Brays," and, having admitted the debt, later asked the plaintiff for evidence of her interest such as, *inter alia*, registration under the Act of 1916. In February, 1959, the plaintiff issued a specially indorsed writ and in their affidavit and their subsequent defence the defendants relied on non-compliance by the plaintiff with the Act of 1916. On 7th April, 1960, Waite claimed the debt from the defendants and on 22nd July Wood also claimed it. The defendants then applied for interpleader relief: the money was paid into court and it was ordered that, whatever transpired in the interpleader proceedings, £200 should remain in court until the determination of costs in the main action. By that date Wood had withdrawn his claim and shortly afterwards Waite also withdrew. The district registrar ordered payment out to the plaintiff of £718 and subsequently, holding that the defendants should have interpleaded in April, 1958, and that, by interpleading, they had abandoned their plea under the Act of 1916, payment out to the plaintiff of the £200 balance and that the defendants pay her costs of the action, limited to £150. Although notice was given in March, 1959, of the plaintiff's intention to apply for relief under s. 8 (1) (a) of the 1916 Act, no such application was in fact made until the hearing of the appeal.

EDMUND DAVIES, J., said that interpleader relief would not be granted unless there appeared to be some real foundation for the expectation of a rival claim. No sufficient

claim was advanced on behalf of Wood and Waite until 7th April and 22nd July, 1960. Had the defendants applied on 7th April or within twenty-eight days thereafter for interpleader relief, they would have acted with reasonable promptitude and his lordship would in any event have awarded them their costs of the action up to that date. Nor had the defendants by interpleading abandoned their plea under s. 8 of the Act of 1916. As the plaintiff had made no application for relief from disability until the present moment, she had not hitherto been entitled to recover one penny in the proceedings, and, accordingly, the defendants' appeal from the registrar's order as to costs must be allowed. The plaintiff had had ample warning of the defendants' intention to rely on s. 8 and must be taken to have been fully aware of the statutory requirement. However broadly s. 8 be construed (see *Re Shaer* [1927] 1 Ch. 355, at p. 359), before granting relief, the Act required the court to be satisfied of the matters therein set out. The plaintiff had not satisfied the court that non-compliance was "accidental" or "due to inadvertence." That she had not applied before because she had thought relief would be hers for the asking was not "other sufficient cause." Relief was not automatic. In the circumstances, it would not be just and equitable to grant relief and it was refused. The defendants would have the costs of the appeal and the application and the general costs of the action, the money in court to be paid out in part satisfaction of their costs. If they taxed at less than £200, the balance to be paid to the plaintiff. Order accordingly.

APPEARANCES: *John MacManus (Boxall & Boxall, for Edwin Boxall & Kempe, Brighton)*; *Philip Panto (Whitehouse Gibson & Oldershaw, for Leslie Wilner, Brighton)*.

[Reported by Miss J. F. LAMB, Barrister-at-Law]

Probate, Divorce and Admiralty Division

DIVORCE: DECREE NISI MADE ABSOLUTE WITHOUT COURT BEING SATISFIED ON ARRANGEMENTS FOR CHILDREN

B v. B

Scarman, J. 20th March, 1961

Summons for directions adjourned into open court.

A wife was granted, in an undefended suit, a decree nisi of divorce. There were two children of the family under the age of sixteen. There being an issue between the parties on custody, this matter was adjourned into chambers by the commissioner who heard the suit, without his making any declaration with regard to the proposals for the care and upbringing of the children. Section 2 (1) of the Matrimonial Proceedings (Children) Act, 1958, provides that the court shall not make absolute any decree of divorce or nullity of marriage, or pronounce a decree of judicial separation, unless and until it is satisfied, as respects every child of the family who has not attained the age of sixteen years, that arrangements have been made for the care and upbringing of the child and that those arrangements are satisfactory or are the best that can be devised in the circumstances, or that it is impracticable for the party or parties appearing before the court to make any such arrangements. By an error which arose through inadvertence, the decree nisi granted to the wife was made absolute before the court had considered whether it could make the declaration required by the Act with regard to the arrangements for the children. The husband, acting on the faith of the decree absolute, had re-married.

SCARMAN, J., said that the section was peremptory. Failure to comply with its requirements rendered the decree absolute null and void. By s. 2 (2), however, the court was empowered to proceed without observing those requirements if it appeared that there were circumstances making it desirable that the decree nisi should be made absolute, or that the decree of judicial separation should be pronounced,

without delay, and if the court had obtained a satisfactory undertaking from either or both of the parties to bring the question of the arrangements for the children before the court within a specified time. The wife, having given such an undertaking to do so within twenty-eight days, would be granted leave to apply forthwith for the decree nisi to be made absolute. Order accordingly.

APPEARANCES: *R. J. A. Batt* (Godfrey Davis, Batt & Hollands); *Nigel Curtis-Raleigh* (Queen's Proctor) as *amicus curiae*.

[Reported by D. R. ELLISON, Esq., Barrister-at-Law]

Restrictive Practices Court

WHETHER TRANSFORMER AGREEMENT IN PUBLIC INTEREST

In re Associated Transformer Manufacturers' Agreement

Russell, J., Sir Stanford Cooper, and Mr. W. L. Heywood
24th March, 1961

Reference.

The agreement between the members of the Associated Transformer Manufacturers' Association fixed the minimum prices for electrical power transformers and related equipment. The prices were based on the average of the three lowest costs submitted by members, plus a reasonable percentage for profit, less certain common discounts.

RUSSELL, J., delivering the judgment of the court, said that the association comprised all the manufacturers of the

largest transformers, known under the agreement as category C transformers, and was responsible for producing most of the other ranges and sizes of transformers. About a third of its members' production was exported. The market for transformers was an expanding one and there was an increasing demand for larger transformers because of the tendency to transmit at higher voltages. The case for the association was put in three alternative ways. It was said that, if the agreement were abrogated, there would be a price war leading to a serious decline in profits, which would result in retrenchment on research and development, and to production of lower quality transformers. Alternatively, the consequences of the price war would be to reduce the money spent on retention of overseas agencies and despatch of engineers to investigate local conditions, with a consequential loss of exports. Finally, that in a free market manufacturers would not be able to secure fair terms for large transformers from the Central Electricity Generating Board, which was the predominant buyer of those transformers. The average profit as a percentage of turnover on sales of large transformers between 1955 and 1959 was about 22 per cent. On a consideration of all the evidence, the court was not satisfied that any of the three alternative contentions were correct and, accordingly, all the restrictions in the agreement would be declared contrary to the public interest.

APPEARANCES: *B. J. M. MacKenna*, Q.C., *Eric Walker* and *D. A. Grant* (Bristows, Cooke & Carpmal); *John Megaw*, Q.C., and *Arthur Bagnall* (Treasury Solicitor).

[Reported by NORMAN PRIMOST, Esq., Barrister-at-Law]

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time :—

National Health Service Contributions Bill [H.C.]

[17th March.

Road Traffic Bill [H.L.]

[21st March.

To make further provision as to road safety and road traffic and for purposes connected therewith.

Sierra Leone Independence Bill [H.C.]

[23rd March.

Read Second Time :—

Affiliation Proceedings (Blood Tests) Bill [H.L.]

[21st March.

Land Compensation Bill [H.L.]

[21st March.

Mersey Tunnel Bill [H.C.]

[22nd March.

Read Third Time :—

Post Office Bill [H.C.]

[21st March.

Suicide Bill [H.L.]

[21st March.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time :—

Department of Technical Co-operation Bill [H.C.]

[23rd March.

To provide for the establishment of a Department of Technical Co-operation under the charge of a Minister of the Crown.

Minister of Space Research and Development Bill [H.C.]

[21st March.

To provide for the establishment of a Minister of Space Research and Development; and for purposes connected therewith.

North Atlantic Shipping Bill [H.C.]

[22nd March.

To enable the Minister of Transport to make advances to Cunard White Star, Limited in connection with the construction of a large vessel for the North Atlantic shipping trade, and to enter into agreements with them concerning insurance risks connected with such a vessel.

Peerage (Renunciation) Bill [H.C.]

[23rd March.

To provide machinery whereby certain peerages may be renounced for life; to permit persons who have thus renounced to sit and vote in the House of Commons if elected so to do; and for purposes connected therewith.

Seasonal Workers Bill [H.C.]

[22nd March.

To make further provision to enable seasonal workers to draw unemployment benefit; and for purposes connected therewith.

Read Second Time :—

Rivers (Prevention of Pollution) Bill [H.C.]

[24th March.

Read Third Time :—

Consolidated Fund (No. 2) Bill [H.C.]

[23rd March.

To apply certain sums out of the Consolidated Fund to the service of the years ending on the 31st day of March, one thousand nine hundred and sixty, one thousand nine hundred and sixty-one and one thousand nine hundred and sixty-two.

Stationers and Newspaper Makers' Company Bill [H.C.]

[23rd March.

B. QUESTIONS

COSTS OF LEASES ACT, 1958

Mr. TALBOT asked the Attorney-General whether he was aware that the Costs of Leases Act, 1958, was being widely evaded by the insistence of landlords, particularly property companies, that tenants still pay landlords' solicitors' costs for preparing leases; and, in view of the continual rise in rents, by which solicitors' costs were fixed, if he would introduce legislation to rescind the power to contract out of the Act.

The ATTORNEY-GENERAL replied that the Costs of Leases Act, 1958, contained an express provision whereby the parties to a lease might, by agreement in writing, make their own arrangements for the payment of the costs of their solicitors. He did not, therefore, consider that the practice described constituted an evasion of the provisions of the Act and he had no information that indicated that it ought to be amended in the way suggested.

[20th March.

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(Continued on p. xiv)

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TOWN AND COUNTRY PLANNING ACT, 1959, s. 31.

Asked what action he proposed to take to amend the Town and Country Planning Act, 1959, s. 31, in the light of *Buxton v. Minister of Housing and Local Government* [1960] 3 W.L.R. 865, Mr. BROOKE said that the law provided that the planning applicant and the planning authority, as well as anyone else with rights under s. 37 arising out of ownership of the land, could make application to the High Court to have a decision of the Minister quashed on certain grounds. He did not think there was a case for empowering other people to apply to the court, if none of those thought fit to do so. A grant of planning permission did not, of course, impair the rights of adjoining owners at common law.

In answer to a further question, he added that he did not think that it would be sensible to require planning authorities to advertise all the planning applications that were made but he had it in mind to circularise local authorities to the effect that proposals of a major character should be brought to the notice of local people who might be interested. [21st March.

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Slaughter of Animals (Prevention of Cruelty) (Regulations) (Appointed Day) Order, 1961. (S.I. 1961 No. 443.) 5d.

Slaughterhouses (Hygiene) Regulations (Appointed Day) Order, 1961. (S.I. 1961 No. 444.) 5d.

Stopping up of Highways Orders, 1961 :—

City and County Borough of Bradford (No. 4). (S.I. 1961 No. 446.) 5d.

City and County of Bristol (No. 2). (S.I. 1961 No. 436.) 5d.

County of Cumberland (No. 3). (S.I. 1961 No. 449.) 5d.

County of Derby (No. 2). (S.I. 1961 No. 464.) 5d.

County Borough of Halifax (No. 1). (S.I. 1961 No. 447.) 5d.

Leicestershire (No. 4) Order, 1957 (Amendment). (S.I. 1961 No. 473.) 5d.

London (No. 11). (S.I. 1961 No. 474.) 5d.

London (No. 12). (S.I. 1961 No. 454.) 5d.

County of Salop (No. 2). (S.I. 1961 No. 450.) 5d.

County of York, West Riding (No. 6). (S.I. 1961 No. 448.) 5d.

Traffic Regulation Orders (Procedure) (England and Wales) Regulations, 1961. (S.I. 1961 No. 485.) 8d.

Wages Regulation (Laundry) Order, 1961. (S.I. 1961 No. 442.) 8d.

Wild Birds (Bullfinches) Order, 1961. (S.I. 1961 No. 482.) 5d.

Wild Birds (Collared Doves) Order, 1961. (S.I. 1961 No. 470.) 4d.

SELECTED APPOINTED DAYS

March

21st Road Traffic and Roads Improvement Act, 1960, ss. 11, 13 (1) to (7), (9), (10).

24th Traffic Regulation Orders (Procedure) (England and Wales) Regulations, 1961. (S.I. 1961 No. 485.)

29th Wages Regulation (Laundry) Order, 1961. (S.I. 1961 No. 442.)

30th Civil Aviation (Licensing) Act, 1960, ss. 1 (2), 6, 9 (except in so far as it repeals the Civil Aviation Act, 1949, s. 12, and the entries referred to in s. 9 (c)).

April

3rd National Insurance Act, 1959, s. 1 (1) (a).
National Insurance Act, 1960, s. 1 (2) (part), (3) (part), s. 2 (2) (part), (3), Sched. I, Pts. II (part), III (part), Sched. III (part), Sched. IV, paras. 2 (part), 3 (part), 4 (part), 5 (part).

National Insurance (Determination of Need) Amendment Regulations, 1960. (S.I. 1960 No. 2395.)

National Insurance (Married Women) Amendment Regulations, 1960. (S.I. 1960 No. 2429.)

National Insurance (Modification of the Superannuation Acts) Regulations, 1960. (S.I. 1960 No. 1270.)

4th County Court Districts (Wells) Order, 1961. (S.I. 1961 No. 486.)

County Court Fees (Amendment) Order, 1961. (S.I. 1961 No. 355.)

5th National Insurance Act, 1960, s. 1 (2) (part), (3) (part), Sched. I, Pts. II (part), III (part).

6th National Insurance Act, 1959, s. 1 (1) (b).
National Insurance Act, 1960, s. 2 (2) (part), s. 6 (4) (part), Sched. III (part), Sched. VI (part).

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal"]

No Breach—No Penalty

Sir,—We were interested to read your leader of 10th March (p. 215) in which you said "Finance companies must surely realise that it is wrong to exact more than their actual loss plus a reasonable sum for expenses and possibly loss of profit, where the (H.P.) contract is terminated or broken."

This, of course, is very fair comment provided one decides what is meant by "actual loss" and "loss of profit."

We who have a fair practice in H.P. make a point of automatically limiting our clients' claims to a figure which we consider to be their loss and it would seem fair to say that if solicitors

did this regularly then the result which you seek would be achieved.

A further point is what the actual loss is and gives rise to a great deal of academic discussion. It might be anything from the actual cash and capital loss in a transaction to the full balance of the H.P. price (even though the period of the agreement has not run its full course) on the basis that if the finance company has lost its bargain it is entitled to its hiring charges for the whole period.

ERIC LEWIS
(of Messrs. Kennedys).

London, W.1.

POINTS IN PRACTICE

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, Oyes House, Breems Buildings, Fetter Lane, London, E.C.4. They should be brief, typewritten in duplicate, and accompanied by the name and address of the sender on a separate sheet, together with a stamped addressed envelope. Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all

Income Tax—SETTLEMENTS ON CHILDREN—INVESTMENT OF PRIZE MONEY FROM PREMIUM BONDS

Q. A father (*F*) bought a block of Premium Bonds in the name of his infant son (*S*), who was then under one year of age. *F* signed the application form as father of the infant, that procedure being authorised in the event of a child investor being under seven years of age. One year after the purchase a substantial prize has now been won on one of the Premium Bonds. *F* wants to invest this sum in industrial shares, the income to be received by him as guardian for *S*. (1) Will such income be deemed that of *F* under s. 397 of the Income Tax Act, 1952? (2) Would the answer be different if *S*'s grandfather had paid for the Premium Bonds, the application form having been signed as before by *F*, who would still act as guardian for *S* as respects both the investment of any prize money and the receipt of income from such investment?

A. If the father provided the funds for the purchase of the Premium Bonds he would be the only settlor within the Income Tax Act, 1952, s. 403. If the grandfather provided those funds then both the grandfather and the father might be settlors within that provision, but by s. 401 the whole of the income would be treated as originating from the grandfather. As to an absolute gift constituting a settlement, see *Thomas v. Marshall* [1953] A.C. 543. If the father was the settlor, whether the income will be treated as his for taxation purposes will depend on what is done with it. By the Trustee Act, 1925, s. 31, he, as trustee, will prima facie accumulate the income until the child is twenty-one. If he does so it will not be applied for the benefit of the child and will not be paid to the child and so will not be treated as the income of the father. The Income Tax Act, 1952, s. 398, is inapplicable because the gift is irrevocable. When the child is twenty-one he will have a claim under the

Income Tax Act, 1952, s. 228. If, however, the father as trustee determines to apply any part of that income for or towards the maintenance, education or benefit of the infant, the income so applied will by the Income Tax Act, 1952, s. 397, be treated for taxation purposes as the income of the father.

Contract—REFUSAL TO PAY FOR WORK DONE

Q. A contract to do work by *A* on a quantity of metal shafts by machining them to a certain size was completed and the shafts delivered to *B*, the person ordering the work, who now refuses to pay for the work done, alleging irregularities in the sizes of the shafts. The shafts were delivered to *B* in June, and the complaint as to the sizes and the refusal to pay was not made until the end of October, when it appeared that, after delivery to *B*, the shafts had had further work done to them by *B* without the knowledge of *A*, and were then delivered to a third party, *C*, who refused to accept them from *B*, on account, not only of alleged wrong sizes, but also of bad workmanship by *B*. Assuming that *B* can prove that *A* did not comply with the original specification, can he now refuse payment, having regard to the fact that he accepted the shafts in June and did further work, itself faulty, without the knowledge of *A*, and did not claim to reject *A*'s work for so long a period?

A. It would seem that *B* has lost the right to reject the shafts and is now confined to his remedy in damages: see s. 35 of the Sale of Goods Act, 1893; *E. & S. Ruben, Ltd. v. Faire Bros. & Co., Ltd.* [1949] 1 K.B. 254; *Mechan & Sons, Ltd. v. Bow, M'Lachlan & Co., Ltd.* 1910 S.C. 758. However, if the contract in question is not a contract of sale (as to this see *Lee v. Griffin* (1861), 30 L.J.Q.B. 252) and the work is of no use to *B*, *A* cannot recover for his work and labour: see *Hill v. Featherstonehaugh* (1831), 5 M. & P. 541; *Farnsworth v. Garrard* (1807), 1 Camp. 38.

"THE SOLICITORS' JOURNAL," 30th MARCH, 1861

ON 30th March, 1861, THE SOLICITORS' JOURNAL was discussing proposals for the examinations to be set for "ten years' clerks" who wished to be admitted solicitors and suggested that it would be unfair not "to make . . . a difference between the examinations to be passed by them and those which are prescribed for the general body of articulated clerks. It is at present proposed that every candidate must pass in Latin and either Greek, French, German, mathematics or physics. Such a scheme must in effect exclude not a few respectable men who have been many years away from school and engaged in the practice of the law, but are by their character and general attainments well qualified for the profession. We suggest, then, that in the case of the 'ten years' clerks' there should be an option of being examined in moral philosophy and political economy in place of the subjects

which we have mentioned. Ethics and economics belong to the same general division of philosophy as jurisprudence. . . . they comprise a domain of knowledge as profitable to the lawyer as they are interesting in themselves; and they are admirably adapted to prepare the minds of men who have not been much accustomed to scholastic training for an accurate and systematic study of the law. The great advantage that would thus be gained could be the fact not only that such knowledge might be acquired by men of mature age at intervals of leisure and without cramming, but that it would remain to those who had gained it an important and permanent acquisition. Whether, indeed, all candidates might not be allowed to elect as one subject for examination, logic, metaphysics, ethics or political economy is a question well worthy of consideration."

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Worthing.—A. C. DRAYCOTT, Chartered Auctioneers and Estate Agents, 8-14 South Street, Lancing, Sussex. Tel. Lancing 2828.
Worthing.—EYDMANN, STREET & BRIDGE (Est. 1864), 14 Chapel Road, Tel. 4060.
Worthing.—HAWKER & CO., Chartered Surveyors, Chapel Road, Worthing. Tel. Worthing 1136 and 1137.
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Worthing.—JOHN D. SYMONDS & CO., Chartered Surveyors, Revenue Buildings, Chapel Road. Tel. Worthing 623/4.

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Marlborough Area (Wilts, Berks and Mants Borders).—JOHN GERMAN & SON (Est. 1840), Land Agents, Surveyors, Auctioneers and Valuers, Estate Offices, Ramsbury, Nr. Marlborough. Tel. Ramsbury 361/2. And at Ashby-de-la-Zouch, Burton-on-Trent and Derby.

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Kidderminster, Droitwich, Worcester.—G. HERBERT BANKS, 28 Worcester Street, Kidderminster. Tels. 2911/2 and 4210. The Estate Office, Droitwich. Tels. 2084/5, 3 Shaw Street, Worcester. Tels. 27785/6.
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Scarborough.—EDWARD HARLAND & SONS, 4 Aberdeen Walk, Scarborough. Tel. 834.
Sheffield.—HENRY SPENCER & SONS, Auctioneers, 4 Paradise Street, Sheffield. Tel. 25206. And at 20 The Square, Retford, Notts. Tel. 531/2. And 91 Bridge Street, Worksop. Tel. 2654.

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NOTES AND NEWS

PETROL SUPPLY AGREEMENTS

"Petrol Company Exclusive Supply Agreements in the United Kingdom," issued by the Motor Accessories Manufacturers Association, Ltd., 94 Gloucester Place, London, W.1, is a revised edition of a booklet containing notes intended for the guidance of solicitors and others concerned with the subject of petrol supply agreements.

WELLS COUNTY COURT TO BE AT WELLS

The County Court Districts (Wells) Order, 1961 (S.I. 1961 No. 486), in force on 4th April, amends the County Court Districts Order, 1949, to provide that the Wells County Court shall cease to be held at Glastonbury and shall be held at Wells.

BUILDING SOCIETY DESIGNATED

The City and Metropolitan Building Society has been designated for the purposes of s. 1 of the House Purchase and Housing Act, 1959.

THE SOLICITORS ACT, 1957

On 10th March, 1961, an order was made by the Disciplinary Committee constituted under the Solicitors Act, 1957, that the name of ANDREW JAMES FISHER DAVIDSON, of No. 5 Grimshaw Street, Burnley, Lancs, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

On 10th March, 1961, an order was made by the Disciplinary Committee constituted under the Solicitors Act, 1957, that the name of CHARLES SHACKLETON, of P.O. Private Bag, Mombasa, Kenya, and now or recently confined in H.M. Prison, Shimo-le-Tewa, Mombasa, Kenya, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

On 10th March, 1961, an order was made by the Disciplinary Committee constituted under the Solicitors Act, 1957, that the name of STEPHEN TOWNSEND, formerly of Bank Chambers, High Street, Egham, Surrey, and now of Daws House, Camelford, Cornwall, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

On 10th March, 1961, an order was made by the Disciplinary Committee constituted under the Solicitors Act, 1957, that the name of FRIEDRICH GRUNWALD, now or recently confined in H.M. Prison, Wormwood Scrubs, London, W.12, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

On 10th March, 1961, an order was made by the Disciplinary Committee constituted under the Solicitors Act, 1957, that LEONARD OWEN, of No. 25 Fenwick Street, Liverpool, 2, be suspended from practice as a Solicitor for a period of six months from 11th March, 1961, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

On 10th March, 1961, an order was made by the Disciplinary Committee constituted under the Solicitors Act, 1957, that the name of RONALD ROSE, of No. 20 Clarendon Rise, London, S.E.13, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

REMOVAL AT OWN INSTANCE

WILFRED FRANCIS PICKERING, of Victoria District Court, Courts of Justice, Hong Kong, solicitor, having, in accordance with the provisions of the Solicitors Act, 1957, made application to the Disciplinary Committee constituted under the Act that his name might be removed from the Roll of Solicitors at his own instance on the ground that he desires in due course to be called to the Bar, an order was, on 9th March, 1961, made by the Committee that the application of the said Wilfred Francis Pickering be acceded to and that his name be removed accordingly from the Roll of Solicitors of the Supreme Court.

LOCAL AUTHORITIES' MUTUAL INVESTMENT TRUST

Centralised investment facilities for the exclusive use of local authorities, to be provided by a company known as the Local Authorities' Mutual Investment Trust, are planned by the British local authority associations. The company is to be formed immediately on the passing of the Trustee Investments Bill extending the investment powers of local authorities.

REGISTRATION OF ESTATE AGENTS

Registration of practitioners on a proper basis is favoured by the Incorporated Society of Auctioneers and Landed Property Agents, stated Mr. E. Howard Hackett in his presidential address at the annual general meeting of the society on 23rd March. "I am hopeful," he said, "that the society, in co-operation with the other professional bodies, will be in a position to present a Registration Bill to Parliament in the near future, as I am sure it is of the utmost importance to stop unscrupulous quack practitioners from bringing the name of estate agent into disrepute."

THE WEEKLY LAW REPORTS

Cases reported in the issue of the *Weekly Law Reports* dated 24th March include the following:—

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OFFICIAL INQUIRIES IN BEING

The following list of current official inquiries (Committees of Inquiry unless otherwise stated) is derived from *Hansard (Commons)*, 23rd March, 1961, *Written Answers*, cols. 74-78:—

Date of Appointment	Subject	Chairman
May, 1959	Probation Service	Sir Ronald Morison, Q.C.
July, 1959	Consumer Protection	Mr. J. T. Molony, Q.C.
July, 1959	Operation of the Truck Acts, 1831-1940	Mr. David Karmel, Q.C.
August, 1959	Scottish Licensing Law*	The Rt. Hon. Lord Guest, Q.C.
December, 1959	Police*	The Rt. Hon. Sir Henry Willink, Bt., M.C., Q.C.
January, 1960	Company Law	The Rt. Hon. Lord Justice Jenkins.
July, 1960	Magistrates' Courts in London	His Honour Judge Aarvold, O.B.E., T.D.
January, 1961	Limitation of Actions in cases of Personal Injury	The Hon. Mr. Justice Davies.

*Interim report issued

Honours and Appointments

Mr. EDWARD LUCAS GARDNER, Q.C., has been appointed Deputy Chairman of the East Kent Quarter Sessions.

Mr. DAVID POWYS ROWLAND has been appointed Stipendiary Magistrate for Merthyr Tydfil.

Mr. WILLIAM THOMAS WELLS, Q.C., has been appointed Deputy Chairman of the County of Hertford Quarter Sessions.

THE SOLICITORS' LAW STATIONERY SOCIETY, LTD.

RIGHTS ISSUE SUCCESSFUL

On 28th March the Society announced that as a result of the recent offer of 90,000 £1 shares to existing shareholders at 27s. 6d. per share, 86,038 shares provisionally allotted had been taken up. Applications had been received for 63,760 additional shares. After excluding applicants who already held the maximum number of shares or who were not solicitors or employees of the Society, the directors were allotting in full to applicants for up to 6 shares, 5 shares to applicants for 7 to 100 shares, 10 shares to applicants for 101 to 350 shares, 15 shares to applicants for 351 to 500 shares and 20 shares to applicants for over 500. Allotment letters and cheques for the balance paid on application were being posted on 30th March.

Obituary

Mr. JOHN KENNEDY ALLERTON, O.B.E., retired solicitor, of Worthing, formerly Town Clerk of Worthing, died on 21st March, aged 84. He was admitted in 1907.

Mr. WILLIAM EDWARD BLAKE CARN, retired solicitor, of Leicester, formerly of Ashford, Kent, died at Taunton on 21st March, aged 67. He was admitted in 1921 and was clerk to Leicester city magistrates. He was mayor of Kingston-on-Thames, Surrey, in 1927.

Mr. GORDON LANCASTER MOUNTFORD FÂCHE, M.C. and Bar, solicitor, of London, W.C.1, died on 18th March, aged 71. Admitted in 1912, he was the last of his name in England.

Mr. RALPH PERCEVAL TATHAM, solicitor, of Lincoln's Inn Fields, died on 17th March, aged 77. He was admitted in 1906.

Mr. REGINALD FRANCIS TRUMP, solicitor, of Bristol, died on 18th March, aged 53. He was admitted in 1932.

Mr. GEORGE WILLIAM WAIN, solicitor, of Macclesfield, died on 4th March, aged 83. Admitted in 1905, he was Macclesfield's oldest practising solicitor.

Wills and Bequests

Mr. RONALD DAVIDSON REED SALE, solicitor, of Aylesbury, left £53,402 net.

Mr. FRANK STANLEY WARD, solicitor, of Ipswich, left £29,402 net.

Societies

The BLACKBURN INCORPORATED LAW ASSOCIATION held their annual general meeting on 9th March, at the Union Club, Blackburn, followed by a supper. The following officers were appointed: president, Mr. R. H. Wilson, T.D.; vice-president, Mr. E. Yates, LL.B. Mr. A. Carter and Mr. J. W. Hollows, LL.B., were re-elected hon. treasurer and hon. secretary respectively.

The WIGAN LAW SOCIETY held their annual dinner at Haigh Hall, near Wigan, on 14th March, when Mr. T. M. Broadie-Griffith presided. The society's guests were Mr. Justice Gorman, Mr. Justice Nield, Judge Neville Laski, the Mayor of Wigan (Councillor J. Bowden), Sir Leslie Peppiatt and Mr. J. A. Lloyd Humphreys.

The KENT LAW SOCIETY Young Members Committee have arranged a meeting (at which members over 35 will be welcome) to hear an address entitled "An Outline of Planning Law and Recent Developments" by Mr. D. P. Kerrigan, B.L. (Edin.), of the Middle Temple, Barrister-at-Law, at the County Hotel, Ashford, Kent, on 5th April, at 6.45 p.m.

PRACTICE DIRECTION

CHANCERY DIVISION

ORDERS MADE ON MOTION DECLARING INFANTS WARDS OF COURT

When, on the hearing of a motion in wardship proceedings before an appointment has been obtained under Ord. 54p, r. 3, an order is made by a judge declaring the infant to be a ward of court, the applicant's solicitor shall thereupon hand the originating summons to the registrar for transmission by him to the judge's chambers.

By direction of Mr. Justice Russell.

W. F. S. HAWKINS,
Chief Master,
Chancery Division.

13th March, 1961.

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"THE SOLICITORS' JOURNAL"

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Classified Advertisements must be received by first post Wednesday.

Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).

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PUBLIC NOTICES

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APPOINTMENT OF LAW CLERK

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Applicants should have had experience in Conveyancing and Local Government experience would be an advantage, but is not essential. Applications, stating age, qualifications and details of previous experience together with the names of two referees, and endorsed "Law Clerk" must be received by me not later than the 10th April, 1961. Relationship to members or senior officers of the Council must be disclosed.

DONALD P. HEATH,

Town Clerk.

Town Hall,
Birkenhead.

15th March, 1961.

BOROUGH OF ENFIELD APPOINTMENT OF ASSISTANT SOLICITOR

There is a vacancy for an Assistant Solicitor in the establishment of the Legal Section of my Department (which includes a Senior Assistant Solicitor and two Assistant Solicitors).

The successful applicant will be placed within the A.P.T. Division Grade V including London Weighting (£1,355–£1,525), according to experience. March finalists will be considered.

Applications, stating age, particulars of experience and specifying names of two referees must reach the undersigned not later than Friday, 7th April, 1961.

CYRIL E. C. R. PLATTEN,

Town Clerk.

Public Offices,
Gentleman's Row,
Enfield,
Middlesex.

March, 1961.

BOROUGH OF SWINDON PRINCIPAL ASSISTANT SOLICITOR, SCALE B

Applications are invited for the appointment of Principal Assistant Solicitor in the Town Clerk's Department, at a salary in accordance with J.N.C. Scale B (£1,520–£1,670).

This officer assists the Town Clerk and his Deputy in dealing at a senior level with the large volume of legal and administrative work of the Department, including work arising from the rapid expansion of the Borough to accommodate London overspill population and industry.

The post therefore calls for considerable local government experience and offers an excellent opportunity for further experience over a wide field.

Housing accommodation may be offered.

Applications, on forms to be obtained from the Town Clerk, Civic Offices, Swindon, should be returned by 13th April.

BOROUGH OF SWINDON

SENIOR LAW CLERK, A.P.T. IV

Applications are invited for the appointment of Senior Law Clerk (unadmitted), in the Town Clerk's Department, at a salary in accordance with A.P.T. Grade IV (£1,140–£1,310).

Applicants should have had considerable experience in all aspects of legal work, preferably in local government, and be capable of acting with a minimum of supervision. In particular, the department is engaged in large scale property transactions in connection with central area redevelopment.

Housing accommodation may be offered.

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BOROUGH OF SWINDON

SENIOR ASSISTANT SOLICITOR, SCALE A

Applications are invited for the appointment of Senior Assistant Solicitor in the Town Clerk's Department, at a salary in accordance with J.N.C. Scale A (£1,480–£1,565).

This officer is required to control the work of the legal section which is involved in considerable legal activity, much of which arises from the rapid expansion of the Borough and central area redevelopment. Applicants should therefore have had good general experience of local government legal work.

Housing accommodation may be offered.

Applications, on forms to be obtained from the Town Clerk, Civic Offices, Swindon, should be returned by 13th April.

CITY OF PLYMOUTH ASSISTANT SOLICITOR

Applications are invited for the above appointment within A.P.T. Grades III and IV (£960 to £1,310 per annum). Previous experience in a local government office is not essential.

Detailed applications, naming two referees, to the undersigned not later than Tuesday, 25th April, 1961.

S. LLOYD JONES,

Town Clerk.

Pounds House,
Peverell,
Plymouth.

HAMPSHIRE COUNTY COUNCIL

Applications are invited for the appointment on the staff of the Clerk of the County Council of an ASSISTANT SOLICITOR, with previous experience in Local Government, preferably with a County or County Borough Council, at a salary within Scale F (£2,015–£2,345).

For a young solicitor with ability and initiative, bent on becoming a Clerk to a large local authority, this appointment presents an opportunity of gaining valuable administrative and legal experience in a County presenting a wide range of local government activity. The commencing salary will be fixed according to qualifications and experience. Separation

allowance and assistance with removal expenses will be paid in approved cases.

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APPOINTMENTS VACANT

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